

MAY 24 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERK

UNITED STATES OF AMERICA :

v. :

JERRY R. HARPER, JR. :

Case No. 7:18cr00025

INDICTMENT

The Grand Jury charges that, at all times relevant to this indictment:

1. Jerry R. Harper, Jr. ("Harper") was a licensed pharmacist who resided in Collinsville, Virginia. Beginning in or about 1998, Harper owned and operated the five pharmacies listed in paragraphs 2-6.

2. Family Discount Pharmacy, Inc. ("FDP") was a corporation doing business in Stanleytown, Virginia, which is within the Western District of Virginia. FDP was a business that filled and sold prescription drugs, over-the-counter drugs, medical products, and other sundries.

3. Stuart Family Pharmacy, Inc. was a corporation doing business in Stuart, Virginia, which is within the Western District of Virginia. Stuart Family Pharmacy was also a business that filled and sold prescription drugs, over-the-counter drugs, medical products, and other sundries.

4. Rocky Mount Family Pharmacy was a corporation doing business in Rocky Mount, Virginia, which is within the Western District of Virginia. Rocky Mount

Family Pharmacy was also a business that filled and sold prescription drugs, over-the-counter drugs, medical products, and other sundries.

5. Chatham Family Pharmacy, Inc. was a corporation doing business in Chatham, Virginia, which is within the Western District of Virginia. Chatham Family Pharmacy was also a business that filled and sold prescription drugs, over-the-counter drugs, medical products, and other sundries.

6. Phamily Pharmacy, Inc., doing business as Brosville Family Pharmacy, was a corporation doing business in Brosville, Virginia, which is within the Western District of Virginia. Brosville Family Pharmacy was also a business that filled and sold prescription drugs, over-the-counter drugs, medical products, and other sundries.

7. Harper combined all of the accounting, including income and expense items, for all five pharmacies under FDP, even though the other pharmacy locations were issued their own Employer Identification Number. All five pharmacy businesses are collectively referred to herein as FDP.

8. Beginning in or about 1998, and continuing through at least April 2014, Harper exercised control over every aspect of FDP's business affairs, including approving all payments by the company and controlling all of FDP's bank accounts.

9. Beginning in or around 2000 and continuing through at least 2014, Harper caused FDP to make personal expenditures for his benefit while, at the same time, failing to pay over to the Internal Revenue Service ("IRS") payroll tax withheld from FDP's employees' paychecks. Instead of paying over FDP's payroll taxes, Harper used

the money for personal purposes, including investments in the stock market, payments for Harper's son's pharmacy school tuition, purchases of real property in Virginia and North Carolina, and purchases of automobiles.

10. The IRS was and is an agency of the United States Department of the Treasury responsible for administering the tax laws of the United States and for the collection of taxes owed to the United States.

Employment Tax Withholding

11. FDP withheld taxes from its employees' paychecks, including federal income taxes, Medicare and Social Security taxes (often referred to as Federal Insurance Contribution Act or "FICA" taxes). These taxes will be referred to in this indictment collectively as "payroll taxes."

12. FDP was required to make deposits of the payroll taxes to the IRS on a periodic basis. In addition, FDP was required to file, following the end of each calendar quarter, an Employer's Quarterly Federal Income Tax Return, IRS Form 941, setting forth the total amount of wages and other compensation subject to withholding, the total amount of income tax withheld, the total amount of Medicare and Social Security taxes due, and the total tax deposits.

13. As the owner of FDP, Harper was a "responsible person," that is, he had the responsibility to collect, truthfully account for, and pay over FDP's payroll taxes.

14. During the calendar years 2000 through 2014, FDP withheld tax payments from its employees' paychecks. However, beginning in approximately April 2002 and continuing through 2014, FDP made no payments to the IRS.

15. Beginning in 2000, FDP further failed to file quarterly employment tax returns, IRS Forms 941, with the IRS, with the one exception of the Form 941 for the second quarter of 2001, which was filed late on September 7, 2009. Otherwise, each Form 941 was due to be filed at the end of the month following the end of each calendar quarter. For example, the Form 941 for the quarter ending March 31, 2000 was due on or before April 30, 2000.

16. Altogether, during the 11 calendar quarters alleged in Counts 1-11 of this indictment, FDP failed to account for and pay over approximately \$1,270,941.63 in payroll taxes, as set forth below:

	Quarter Ending Date	Payroll Taxes Due
a.	09/30/2011	\$ 105,429.66
b.	12/31/2011	\$ 113,534.40
c.	03/31/2012	\$ 117,992.23
d.	06/30/2012	\$ 116,672.16
e.	09/30/2012	\$ 115,121.02
f.	12/31/2012	\$ 116,699.21
g.	03/31/2013	\$ 115,599.92
h.	06/30/2013	\$ 138,548.93
i.	09/30/2013	\$ 125,215.84
j.	12/31/2013	\$ 149,611.21
k.	03/31/2014	\$ 56,517.05

COUNTS ONE - ELEVEN

(Failure to Collect, Account For, and Pay Over Employment Taxes; 26 U.S.C. § 7202)

The Grand Jury charges that:

17. The allegations contained in introductory paragraphs 1-16 are incorporated herein.

18. Beginning on or about the dates listed below, in the Western District of Virginia, and elsewhere, the defendant, Jerry R. Harper, Jr., did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes withheld and Federal Insurance Contributions Act taxes due and owing to the United States on behalf of FDP and its employees, for each of the following quarters, with each calendar quarter constituting a separate count of this Indictment:

	Count	Quarter Ending Date	Payroll Taxes Due
a.	One	09/30/2011	\$ 105,429.66
b.	Two	12/31/2011	\$ 113,534.40
c.	Three	03/31/2012	\$ 117,992.23
d.	Four	06/30/2012	\$ 116,672.16
e.	Five	09/30/2012	\$ 115,121.02
f.	Six	12/31/2012	\$ 116,699.21
g.	Seven	03/31/2013	\$ 115,599.92
h.	Eight	06/30/2013	\$ 138,548.93
i.	Nine	09/30/2013	\$ 125,215.84
j.	Ten	12/31/2013	\$ 149,611.21
k.	Eleven	03/31/2014	\$ 56,517.05

Each count in violation of Title 26, United States Code, Section 7202.

A TRUE BILL this 24 day of May, 2018.

s/Grand Jury Foreperson
GRAND JURY FOREPERSON

Thomas T. Cullen / by RAM
THOMAS T. CULLEN
UNITED STATES ATTORNEY